IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2009

C O R A M :

THE HONOURABLE MR. JUSTICE K. CHANDRU

W.P.Nos.4876 of 1999 and 2869 of 1998

Chennai Regional Petroleum Dealers'
Association, rep.by its Secretary
Mr.P.Chander, No.30, Poonamallee
High Road, Chennai -600 003. .. Petitioners in W.P.No.4876/1999

All India LPG Distributos'
Federation (SR),
rep. by its General Secretary,
Mr. K. Gurumurthy
356/B, West Avenue,
M.K.B. Nagar,
Chennai - 600 039. .. Petitioners in W.P.No.2869/1999

-vs-

1.The Corporation of Chennai, rep.
by its Commissioner,
Rippon Buildings, Park Town,
Chennai-600 003.

2.The State of Tamil Nadu rep.by
its Secretary to Government,
Municipal Administration Department,
Fort St.George, Chennai-600 009. .. Respondents in both W.Ps.

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PRAYER : W.P. No.4876/1999 has been filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari calling for the records relating to the proceedings of the first respondent in the resolution dated 24.3.1960 passed by the Chennai Municipal Corporation (i.e.) the first respondent herein enhancing the schedule of fees chargeable under section 365(ii) of the Madras City Municipal Corporation Act enhancing the licence fee charged for the petrol bunk from Rs.300/- to Rs.6000/- and for service stations from Rs.540/- to Rs.9000/- as a flat rate

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irrespective of the horse power used in so far as the members of the petitioner Association are concerned and to quash the same.

W.P. No.2869 of 1998 has been filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, to call for the records relating to the proceedings of the first respondent culminating in the issue of the impugned order No.F.2/1859/97 dated 5.12.1997 issued by the first respondent herein, Corporation of Madras, which is purported to be under Section 365(2) of the Madras City Municipal Corporation Act, 1919 and to quash the same.

For petitioner : Mr. D.R. Sivakumar

For respondents : Mr. V. Bharathidasan (R1)
Mr.A.Arumugam, Spl.G.P. (R2)

O R D E R

The petitioner in W.P. No.4876 of 1999 is a registered Association of petroleum dealers at Chennai. Though it is claimed that it has 284 members, the names and address of 143 of its members is furnished in the typed set filed along with writ petition and found at page Nos.29 to 35. It is claimed that the present writ petition has been filed on behalf of those members in a representative capacity. In the present writ petition, the challenge is to the resolution passed by the first respondent-Corporation of Chennai dated 24.3.1916 passed under Section 365 (2) of the Madras City Municipal Corporation Act, 1999 (For short "MCMC Act").

2. The petitioner had not stated as to why they have waited for challenging the said resolution after a period of 39 years. Only it is stated in the affidavit that they are forced to come to the Court only because the Officials of the first respondent-Corporation started demanding the enhanced rate at the time of renewal of their licence only in the yea 1999 and so far they have not claimed the enhanced rate and there was no occasion to challenge the same.

3. It is an admitted case that under Section 365(ii) of the MCMC Act, the first respondent-Corporation Council passed a resolution, enhancing the scale of fees payable. Under the head, LD (dangerous trades), dealing in petroleum and petroleum products have been brought under the licencing system. In the present case, the impugned resolution dealt with automobile fuel supply and service stations under two heads and gave the revised licensing fee, which are as follows:-

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1.	Each Automobile fuel supply and service station where fuel is supplied and vehicles are serviced.	9000.00	Per annum, each station
2.	Each Automobile Fuel Supply Station where fuel alone is supplied	6000.00	-do-

4. When writ petition was admitted on 15.4.1999, this Court passed the following interim order:-

> " In similar matter, this Court in W.M.P. No.4249/1998 in W.P. No.2869/98 dated 6.8.98 granted interim order on certain conditions. Following the said order, there will be an interim stay on condition that the members of the petitioner-Association shall pay the existing licence fee and furnish bank guarantees for the difference between existing licence fee and the enhanced licence fee within four weeks from today failing which the interim stay shall stand automatically vacated. Even for the year commencing from 1.4.99 the abovesaid condition has to be complied with failing which the interim stay shall stand automatically vacated."

5. The petitioner-Association filed an application for modifying the said conditions on the ground that the condition imposed by this Court was onerous and therefore, it must be relaxed. However, the said modification petition was dismissed by this Court on 31.3.2000. It is not clear as to whether the petitioners have paid the enhanced rate in spite of their being no interim order in their favour. A perusal of the modification petition shows that they have been paying only Rs.300/- in respect of automobile fuel supply outlets and in respect fuel supply-cum-service stations at Rs.540/-.

6. On notice from this Court, the first respondent-Corporation has filed a counter affidavit dated nil (..August, 1999) as well as an additional counter affidavit dated 15.4.1999. It is stated in the counter affidavit that in spite of the council's resolution, since the local body was not collecting the enhanced fee, there was audit objection from both local fund audit as well as A.G.'s office. Even the plea of discrimination in respect of other trades may not be correct. Further it is also stated that nearly 22 petrol bunks in the city are paying the enhanced rate. The power of Corporation to enhance the fee cannot be challenged only on the

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ground that it may affect the business of the members of the petitioner-Association.

7. Mr. D.R. Shivakumar, learned counsel for the petitioner-Association submitted that the action of the Corporation in revising the fee from Rs.300/- to Rs.6000/- (20 times) is arbitrary and violative of Article 14 of the Constitution. Earlier, the Corporation was charging on the basis of the horse power of the motors used. But, presently they have fixed a flat rate on all bunks. He also submitted that the other trades are not charged as much as the petroleum outlets. He further submitted that the members of the petitioner-Association were only intermediaries and getting commission for the sale of petroleum products. The petroleum Companies have not substantially increased the commission to them and if they pay the enhanced fee, they will be in a disadvantageous position in the trade.

8. Learned counsel placed reliance upon the judgment of the Supreme Court reported in the case of BHAGWAN DASS SOOD V. STATE OF H.P. AND OTHERS ((1997) 1 Supreme Court Cases 227). He placed reliance upon the paragraphs 35 and 36, which are as follows:-

> " 35. By a series of decisions of this Court, reference to which have already been made, the principles for upholding constitutional validity of imposition of levy of market fee in a notified market area have been laid down. The Agricultural Produce Marketing Acts have been enacted by various State legislatures. The beneficial legislation is aimed to prevent exploitation of growers of agricultural produce in the hands of dealers, traders and middlemen. There is commonness, by and large, in such legislations. The Marketing Act and the Rules framed thereunder usually contain provisions for establishing organised market and market yards, provisions to ensure sale and purchase of agricultural produce at a fair price to be notified, to ensure correct weighment of such produce brought and sold in the market yards, to ensure storage of agricultural produce by giving reasonable advances against the produce stored in the godowns of the market committee so that distress sale at a lower price at the time of harvesting is prevented for the benefit of farmers and agriculturists, to provide roads and pathways for transport of agricultural produce to organised market yards, to disseminate information to the farmers about improved techniques in cultivation, to ensure supply of

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good quality seeds, manures, agricultural implements etc. for intensive cultivation, to provide place of rest for farmers bringing their produce in the organised market yards after ensuring sanitary conditions in and around such organised market yards etc. etc. In order to ensure generation of funds in the hands of market committee and Boards constituted under the Marketing Act, so that organised markets and market yards are established with necessary infrastructures involving substantial cost, the Marketing Act invariably contains provisions for imposition of levy of market fee at a specified rate on the traders and dealers in specified agricultural produce operating within the specified market area and in principal and sub-market yards established by the market committee. The dealers and traders are required to take licence for their trading activities in such area in respect of specified agricultural produce so that their trading activities are monitored and controlled and they may not escape the liability of imposition of market levy.

36. Levy of market fee being essentially a fee and not a tax, such imposition of levy of market fee necessarily inheres in it the essence of quid pro quo between the fees levied and services returned to the payer of such fees. What should be the extent of service rendered to the payers of levy of market fees so as to keep such levy of fees within the bounds of accepted principle of fee involving existence of reasonable quid pro quo has been a vexed question agitated before various High Courts including this Court from time to time. Some of the decisions of this Court on this question have been indicated. The legal position regarding constitutional validity of levy of market fee may be summarised as follows:

(i) Existence of quid pro quo is essential for retaining the character of 'fee' in the matter of levy of market fees.

(ii) Such quid pro quo is not to be reckoned with any mathematical precision with reference to quantum of fees realised by imposition of levy and the percentage of such fees spent for establishing market yards, construction of various infrastructures etc. and providing various amenities as envisaged under the Marketing Act and

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the Rules framed thereunder for effective implementation of aims and objectives under the Act.

(iii) The service to be rendered to the payers of market fee must be real and not illusory.

(iv) Such service must have an objective basis and have a direct link and not be remote in its effect.

(v) It is not necessary that imposition of levy is to be effected only on establishment of principal and sub-market yards by completing the infrastructures required for such establishment of market and sub-market yards. Such construction being time-consuming and expenditure-oriented, it will be sufficient to justify valid imposition of levy if it is demonstrable that after notifying market area, effective steps not in contemplation but in reality have been taken to identify market and sub-market yards and schemes for establishment of such market or sub-market yards have in fact been put to action and the market fees levied and realised are being ploughed back for the advancement of the purpose for which market fees have been levied and realised.

(vi) In deciding the question of rendering of a real and not illusory service in discharging the obligation emanating from quid pro quo, to levy of market fee, no strait-jacket formulae can be evolved. Fact-situation in the matter of establishment of principal and sub-market yards and the practical feasibility of construction of infrastructures, roads, pathways etc. for establishment of such market yards within a time-frame and in the light of financial constraints is bound to vary depending on various factors including imponderables. It is, therefore, essentially necessary to take a pragmatic approach to the problems associated with establishing market and sub-market yards with necessary infrastructures etc. and accompanying facilities and amenities to be made available to traders and producers coming to such yards, in order to decide whether concrete steps have been translated into action with reasonable sincerity in implementing the schemes envisaged under the Marketing Act and the Rules framed thereunder.

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9. It is not clear as to why the judgment rendered on the question of levy of market fee collected by the Regulated Marketing Committees set up under a state legislation is cited at the Bar. The fee charged by a local body such as the first respondent though may not be a tax, but it is a regulatory-cum-compensatory fee.

10. Thereafter, the learned counsel placed reliance upon another judgment of the Supreme Court relating to licensing fee charged by the Hyderabad Muncipal Corporation. In that case, the Supreme Court upheld the charge of licensing fee based upon monthly rents collected in lodging houses and hotels. The learned counsel placed reliance upon paragraph 16 of the judgment of the Supreme Court in Secunderabad Hyderabad Hotel Owners' Assn. v. Hyderabad Municipal Corpn., (1999) 2 SCC 274). The said paragraph reads as follows:-

> "16. In the first place, it is not necessary that a fee should only be in the form of a lump sum fee. A fee can also be graded as in the present case. The Corporation has chosen the quantum of rent paid as the criterion for the quantum of fee to be charged. The rent under the relevant provisions of law in that connection, does have a nexus with the area in the occupation of the lodging house or eating house. In the case of activities carried on by these lodging houses and eating houses, the area in their possession has a direct nexus with the extent of business activities. The need for cleanliness and hygiene, the generation of garbage and the extent of regulation that may be required depend upon the size of the premises which in turn controls the extent of activity. Undoubtedly, in a given case, if the premises are old, the rent may be less but that does not mean that classifying premises on the basis of the rent paid has no connection with the quantum of fee charged."

However, the learned counsel failed to note that in the very same judgment, the Supreme Court has held that it was not possible to formulate a definition that it would be applicable to all cases. The Supreme Court also held that the regulatory fee were levied not only for the services rendered but also for the purpose of monitoring the licencees so as to ensure they comply with the terms and conditions of the licence. Therefore, it is necessary to refer paragraphs 10 and 12 from the very same judgment and it reads as follows:-

> "10. In the case of Commr., H.R.E. v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt[1]

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one of the earliest cases dealing with the question whether the levy is a fee or a tax, this Court held that the Constitution and, in particular, the legislative entries in Schedule VII of the Constitution make a clear distinction between a tax and a fee. This Court reproduced the definition of what "tax" means, given by Latham, C.J. of the High Court of Australia in Matthews v. Chicory Marketing Board[2] (CLR at p. 276) (see at p. 1040). "A tax" according to the learned Chief Justice, "is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered". A fee, on the other hand, is generally defined to be a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases, the costs are arbitrarily assessed. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay. These are undoubtedly some of the general characteristics, as far may be, of various kinds of fees. It is not possible to formulate a definition that would be applicable to all cases. The Court then observed: (at p. 1042)

"The distinction between a tax and a fee lies primarily in the fact that a tax is levied as a part of the common burden, while a fee is a payment for a special benefit or privilege. Fees confer a special capacity, although the special advantage, as for example, in the case of registration fees for documents or marriage licences, is secondary to the primary motive of regulation in the public interest."

There is really no generic difference between a tax and a fee and as said by Seligman, the taxing power of a State may manifest itself in three different forms known respectively as special assessments, fees and taxes. Our Constitution has, for legislative purposes, made a distinction between a tax and a fee.

12. In the present case, however, the fees charged are not just for services rendered but they also have a large element of a regulatory fee levied for the purpose of monitoring the activity

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> of the licensees to ensure that they comply with the terms and conditions of the licence. Dealing with such regulatory fees, this Court in Vam Organic Chemicals Ltd. v. State of U.P.[8] (SCC at p. 726) observed that in the case of a regulatory fee, no quid pro quo was necessary but such fee should not be excessive. The same distinction between regulatory and compensatory fees has been made in the case of P. Kannadasan v. State of T.N.[9] (SCC in para 36) as well as State of Tripura v. Sudhir Ranjan Nath[10] (SCC at p. 673)."

Further, in the very same judgment in paragraph 7, the licensing fee charged by the Hyderabad Municipal Corporation in respect of lodging houses and hotels were extracted. It is found that between the period 1981 to 1992, there was an increase in the fee ranging from 12 to 30 times. That was not interfered with by the Supreme Court.

11. Therefore, it is not necessary to go into the question whether the first respondent-Corporation was utilising the entire collection made from the licensing fee only in respect of the petroleum outlets as it is solely outside the scope of the present litigation. The further contention that it was discriminatory to charge other trades on different rates cannot be accepted. The present schedule of fee had classified the different trades based upon the structure, road obstruction, offensive and dangerous trades. Even in respect of the fuel outlets, there has been a distinction in the licensing fee based upon whether the outlet has a service station attached to it or not.

12. It is shocking to note that the petitioners have not paid the licensing fee as fixed by the Municipal Corporation and were paying on their own rates depending upon the horse power of the motor used in their outlet. This must have been in collusion with the Officials of the Corporation. But, for the audit objection made by LF audit department and AG's office this non recovery would not have come to notice. The arguments that their commission rates have not gone up over the sale of petroleum products cannot be accepted since no material was placed before this Court. Further, it is more than 48 years have lapsed since the date of the impugned council resolution and still the petitioners are contending over the alleged excess levy. For yet another reason, the petitioners are not entitled for any relief from this Court since they have failed to comply with the interim order passed by this Court.

13. In the light of the above, no case is made out to interfere with the licensing fee charged by the first respondent-Corporation. Hence the writ petition stands dismissed.

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14. In W.P. No.2869 of 1998, the challenge is to the enhanced licence fee made by the first respondent-Corporation in respect of consumer gas storing and selling. The fee, which was fixed at Rs.450/- was increased to Rs.2,000/- from the year 1998-99. Since similar contentions were raised in this writ petition also and common arguments were addressed, this writ petition will also stands dismissed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

js/ssa.

To

1.The Commissioner,
Corporation of Chennai,
Rippon Buildings, Park Town,
Chennai-600 003.

2. The Secretary to Government,
Municipal Administration Department,
Fort St.George, Chennai-600 009.

1 CC to the Government Pleader, SR NO.4366

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